* **THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 28757 of 1997

% 05.06.2007

B. Vasanthi Rao and others.

..... Petitioner

Vs.

1. $ Syndicate Bank, Head Office, Manipal rep, by its Managing Director and another.

....Respondents.

! Counsel for the Petitioner: Sri S. Ashok Anand Kumar

^ Counsel for the Respondent bank: A. Krishnam Raju, Standing Counsel

< Gist:

>Head Note

? Citations:

[1] 1995 Supp (3) SCC 456
2 2003(5) SCC 83
3 2000(5) SCC 231
4 AIR 1967 SC 1124
5 AIR 1982 SC 937
6 1994(1) SCC 292
7 1996(2) SCC 205
8 2006(5) SCC 153
9 1964 (5) SCR 64
10 (2006)5 SCC 173
11 (1964) 4 SCR 718
12 (1965) 1 WLR 1320 at 1326

[13] (1977) AC 1014
[14] (1972) 2 QB 455 at 493
[15] (1978) 1 All ER 411
[16] AIR 1963 SC 114
[17] 2001(2) SCC 386

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 28757 of 1997

O R D E R:

The order of the Chairman & Managing Director of the Syndicate Bank dated 20-02-1996, and the order of the General Manager dated 23-03-1992, are under challenged in this writ petition and a Writ of Certiorari is sought to quash both these orders. During the pendency of this writ petition the petitioner died. Thereafter, by order in WPMP.No.22228 of 1999 dt. 09-11-1999, his wife and both his sons were brought on record as his legal representatives.

Facts, in brief, are that, while working as the Divisional Manager of the respondent-bank at Patna, the petitioner was issued charge memo dated 24-11-1990 for certain irregularities alleged to have been committed by him during the period, between 11-07-1983 and 03-06-1989, while functioning as the Divisional Manager at the Divisional Office, Hyderabad (Rural Division). The relevant portion of the charge memo reads thus:-

"Following irregularities are observed in the matter of recommending/sanctioning of the said loans:

a) That in their letter No.3636 dt.2.6.1987, HO, CPFMO had agreed to consider the proposal only if the loanees are persons whose salaries are routed through the Bank and employed in companies who are dealing with the Bank.

However, while informing M/s BMR Estates and Builders, the sponsors of the scheme vide your letter No.2924 dt.20.6.1987 that Bank is agreeable to their proposal dated 30.4.87, the terms stipulated by Head Office as stated above were not incorporated in the said letter.

b) Head Office had also in their letter 3636 dated 2.6.1987 directed to recommend viable proposals to them for their clearance. However, this stipulation was not adhered to by the branch as a result of which loans were continued to be sanctioned/arranged/released at branch level itself without seeking clearance of Head Office and this fact was also within your knowledge.

c) Specific sanction letter or clear cut guidelines such as per party limit, validity of the limit, margin to be maintained, interest rate, eligibility criteria were not conveyed to the branch.

d) Zonal Office vide their letter No.6467 dt.28.12.87 had permitted Divisional Office (Rural) to approved the branch action in having arranged the loans, subject to having followed all the norms.

However, though the norms as stipulated were not followed/adhered to while releasing the loans by this branch you ratified/approved the branch action in arranging the said loans vide your letter No.10947 dt.2.3.88.

It is now observed that a number of complaints have been received from certain employees of the Government departments to the effect that loans have been arranged for a higher amount than the one agreed to and by between them earlier.

In addition to this the complaints also relate to the following matter:

a) that the sponsors have not registered the house plots in their names in all the cases.
b) That title deeds have not been conveyed to them
c) That in a few cases, the plots which have been registered in their names, are not the ones promised to them earlier by the sponsors.
d) That the actual cost/value of the plots are around Rs.3000/- to rs.5000/- only, whereas the loans are arranged for Rs.8000/- to 12000/-

That as a result of these complaints, repayments are not forthcoming towards a large number of loan accounts since the letters of undertaking given by the loanees to their respective employers, authorizing deduction of monthly instalments along with interest from their salaries towards credit of their respective loan accounts, have been countermanded/withdrawn by the said complaints."

An enquiry was conducted and the enquiry officer found the petitioner guilty of all the charges, except to the limited extent that complaints had been received from certain employees of government departments to the effect that loans had been arranged for a higher amount than the one agreed to between them earlier. The enquiry officer held that, while the complaints had alleged a conspiracy between the bank and the builders, no such conspiracy had either been alleged in the charge sheet nor was any evidence adduced to prove the same. The enquiry officer also held that the petitioner's contention that the complaint contained baseless allegations, and were basically aimed at the builders, had not been challenged by the prosecution and that the complaints had apparently originated because of misunderstanding between the borrowers and the builders which was beyond the control of the bank. The enquiry officer further held that no substantial evidence had been adduced by the prosecution to show that the petitioner was responsible for the irregularities alleged in the said complaints or that there were lapses or negligence on his part in the discharge of his official duties.

On receipt of the enquiry report, the second respondent, by order dated 23-03-1992, concurred with the findings of the Inquiring authority, held the petitioner guilty of misconduct under Regulation 3(1) read with Regulation 24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 (for short 'the Regulations'). The 2nd respondent held that the charges, established in the enquiry, were serious in nature attracting

deterrent punishment, and since the petitioner had paved the way for the irregular state of affairs in the transactions, and had exposed the bank to huge financial risk, ends of justice would be met if the penalty of 'removal' from the services of the bank was imposed on the petitioner. Accordingly, for breach of Regulation 3(1) of the Regulations, the petitioner was removed from the services of the bank with immediate effect.

Aggrieved thereby, the petitioner preferred an appeal to the first respondent. The first respondent, by order dated 20-02-1996, held that the petitioner had failed to adhere to the stipulated norms/guidelines while sanctioning loans, that the original advance was about Rs.1.19 crores and the individual loans ranged between Rs.8,000/- to Rs.12,000/- which were required to be cleared within 36 months from the date of availment, that interest was charged at 16.5%, that the loan proposal scheme of M/s. B.M.R Estates and Builders was sponsored by and through the Alwal Branch, that the proposal was forwarded to the Deputy General Manager, Zonal Office, Hyderabad, by the petitioner with his favourable recommendations on the proposal which, in turn, was forwarded to the Head Office by the Zonal Office with their recommendation that the proposal was deposit oriented and the individual loans would be considered only to the extent of 50% of the deposit received in advance, that the Head Office had informed the Zonal Office to consider the proposals only if the loanees were persons whose salaries were routed through the bank and were employed in companies which had dealings with the bank restricting the outflow of funds to 50% of the deposit mobilized and this was subject to

the proposal otherwise being in order. The first respondent held that the petitioner had, subsequently, taken up the matter with the Zonal Office stating that the companies, whose employees were financed by the scheme, could not be persuaded to open an account for obvious reasons, that they had already advised the branch to restrict the outflow of funds only to 50% of the deposits and that the proposals were required to be scrutinized properly. The first respondent held that the petitioner, being the head of the Divisional Office, had failed to send specific sanction letters/clear cut guidelines such as per party limit, validity of the limit, margin to be maintained, rate of interest, eligibility criteria etc. and that, while arranging loans, there was no specific clearance from the Head Office though the branch action was subsequently approved inspite of the fact that the norms stipulated were not complied with. The first respondent noted that, as far as recovery aspect was concerned, the bank had filed suits against the loanees for recovery, that recovery through legal recourse was always a time consuming task and, if the petitioner had carefully evaluated the scheme and complied with the stipulated norms, the matter would not have landed in the Court of law. The first respondent held that the contention of the petitioner, that his case was given an isolated/discriminatory treatment by the bank, was not supported by substantial evidence, the averment was vague and irrelevant and, since huge funds of the bank were involved in the transactions, the petitioner should have been cautious enough to monitor the scheme, that he had functioned in a casual and perfunctory manner and that the bank was likely to incur heavy

pecuniary loss. Taking into consideration various aspects of the case the first respondent held that he was taking a lenient view and that the punishment of removal from the services of the bank was being reduced to that of “Compulsory retirement”.

The thrust of the submissions of Sri S. Ashok Anand Kumar, learned counsel for the petitioner, is that since the action of the petitioner was approved, initially by the Managing Director of the Bank on 07-08-1987 and, thereafter, by the Zonal Office, in its proceedings dated 22-02-1988, any technical violation or non-compliance with the earlier instructions issued by the Head Office, in its proceedings dated 02-06-1987, must be held to have been waived, and, consequent upon approval being accorded, both by the Managing Director and the Zonal Office, the petitioner can no longer be held responsible for any such technical violations. Learned counsel would submit that, since the subsequent approval of the Managing Director and the Zonal Office amounted to ratification of the earlier acts, any technical violation or accountability lapses on the part of the petitioner must be held to have been condoned and, as a result, no further action could have been taken, thereafter, against the petitioner. Learned counsel would contend that the petitioner was singled out for punishment while his subordinates, including the Branch Manager, (who had sanctioned the loans and had released the amounts), and his superiors at the Zonal Office, who had approved his action, were not even proceeded against departmentally and that the petitioner was made a scapegoat as certain baseless complaints were received by the bank. Learned counsel would submit that the

petitioner was imposed the punishment of removal from service by the second respondent, just a month prior to his retirement on superannuation, which had resulted in the petitioner being denied pension under the Pension Regulations governing employees of the respondent-bank. Learned counsel would place reliance on the policy guidelines of staff accountability issued by the respondent-bank on 09-12-2002 to contend that, even where sanction of loans was approved subsequently, earlier accountability lapses was specifically required not to be pursued thereafter. While fairly conceding that the said circular dated 09.12.2002 was subsequent to the impugned order of punishment of removal from service passed by the second respondent, and that there was no plea in this regard in the writ petition filed before this Court, learned counsel would submit that, nonetheless, since these guidelines were framed, on a detailed examination of various aspects, by expert committees of the bank, from time to time, it was merely a reiteration of the consistent earlier practise of the bank not to take disciplinary action for accountability lapses when sanction was subsequently accorded. Learned counsel would contend that the writ petition filed by the legal representatives of the deceased employee was maintainable and, while the consequence of the writ petition being allowed was that the legal heirs of the deceased employee were not entitled to claim reinstatement, they would, nonetheless, be entitled for the monetary relief which would ensue as a consequence of the impugned orders of punishment being quashed. Learned counsel would contend that the enquiry officer had made no reference, in his report, to the endorsement of the

Zonal Office dated 26-12-1987, on Ex.S-24 letter dated 22.12.1987 addressed to the Deputy General Manager at the Zonal Office, wherein the petitioner, while informing that this was agreed to by the Chairman during his visit to Hyderabad, had sought permission to approve the action of the branch in release of the loans, or to Ex.S.27(2) wherein the Zonal Office had informed the Head Office that they had approved the branch's action in releasing the loans, both in view of the fact that the Managing Director had permitted release of the loans during his visit on 07-08-1987 and as the Divisional Office had confirmed that the branch had stopped arranging loans under this category, as all the complaints had been promptly attended to by deputing their officers and as the repayment position of the accounts had improved. Learned counsel would place reliance on **U.P. Avas Evam Vikas Parishad Vs. Friends Cooperative Housing Society Ltd.**[1], **Vijayadevi Naval Kishore Bhartia Vs. Land Acquisition Officer**[2], **Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department**[3], **Girijanandini Devi Vs. Bijendra Narain Choudhary**[4], **State of U.P. Vs. Mohd. Sharif**[5], **Shri Rameshwar Manjhi Vs. Management of Sangramgarh Colliery**[6], **Puran Singh Vs. State of Punjab**[7] and **D.C. Aggarwal Vs. State Bank of India**[8]**.**

Sri A. Krishnam Raju, learned standing counsel for the respondent-bank, on the other hand, would contend that the approval accorded, both by the Managing Director and the Zonal

Office, was only from the resources angle i.e. as against the earlier sanction accorded for grant of loans to the extent of 50% of the deposits mobilized, approval had been given for sanction of loans upto 60% of the deposits mobilized. Learned standing counsel would submit that, since approval was accorded only from the resources angle, the petitioner was required to comply with the other stipulations in the Head Office letter dated 02-06-1987 and since, admittedly, he did not adhere to the stipulations, had instructed the Branch Office to sanction the loans, and release the amounts, he was rightly held guilty of the charges levelled against him and was imposed the punishment. Learned standing counsel would submit that the petitioner cannot be said to have been singled out for adverse treatment since he alone was responsible for the irregularities and his attempts, to now shift the blame on others, was clearly an after thought. Learned standing counsel would reiterate that, since the procedural violations and the petitioner's failure to adhere to the conditions stipulated in the Head Office letter dated 02-06-1987 had not been subsequently approved either by the Managing Director or by the Zonal Office, the irregularities committed by him cannot be said to have been condoned and the respondents were justified in initiating departmental action against him and, on his being found guilty in the departmental enquiry, in initially imposing on him the punishment of removal from service which was later reduced to "compulsory retirement". Learned standing counsel would submit that even assuming, without admitting, that the approval was for release of the loans in its entirety, and not merely from the

resources angle, this aspect did not relate to charge No.1 and that, in any event, charge No.1 must be held to have been established. Learned standing counsel would submit that even if one of the several charges levelled against the delinquent employee is held to have been established, for which the punishment of compulsory retirement can lawfully be imposed, this Court would not interfere in proceedings under Article 226 of the Constitution of India. Learned standing counsel would contend that, since the orders under challenge are the orders of punishment imposed on the petitioner, it is the petitioner alone who can be said to be aggrieved thereby, and not his legal representatives, and consequently a writ petition filed by him cannot be continued after his death by his legal representatives. Learned standing counsel would contend that this Court, under Article 226 of the Constitution of India, would not sit in appeal over findings of fact recorded by domestic tribunals nor would it re-appreciate the evidence on record or substitute its views for that of the enquiry officer or the disciplinary authority, to interfere with the punishment imposed for proved acts of misconduct. Learned standing counsel would contend that, since the enquiry officer, on an elaborate and detailed analysis of the evidence on record, had come to the conclusion that the petitioner had committed the alleged irregularities, the respondents were justified in holding him guilty of the charges and in imposing punishment for such proved acts of misconduct.

On the question of maintainability of the writ petition being continued by the legal representatives of the delinquent employee, who died during the pendency of the writ petition, the maxim “

actio personalis moritur cum persona", a personal action dies with the person, has limited application. It operates in a limited class of actions *ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. (**Girijanandini Devi**[4]).

In **Mohd. Sharif**[5], the Supreme Court observed:-

"……..We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief that would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased……."

Again in **Shri Rameshwar Manjhi (deceased) through his son Shri Lakhiram Manjhi**[6], the Supreme Court held:-

"…….Even otherwise there may be a claim for back wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman……."

In the present case also, while the death of the delinquent would result in an end to the claim for reinstatement into service, his legal representatives would, however, be entitled to have the impugned order of punishment quashed and to claim the monetary benefits due to the deceased delinquent from the date of imposition of punishment till the date of his death. The objection to the maintainability of the writ petition must, therefore, be rejected.

To examine the contentions urged, regarding approval accorded by the Managing Director and the Zonal Office, it is

necessary, in brief, to refer to the relevant correspondence in this regard, for it is only on examination thereof can it be determined whether approval was accorded in its entirety or whether approval was accorded only from the resources angle and whether the petitioner's failure to adhere to the stipulations contained in the Head Office letter dated 02-06-1987 was condoned or not.

The Head Office of the Syndicate Bank, in its letter dated 02-06-1987, informed the Deputy General Manager, Zonal Office, Hyderabad, as under:

"We may consider the proposal only if the loanees are persons whose salaries are routed through us and employed in companies who are dealing with us. Taking into consideration the SLR/CRR, incremental reserve ratio etc., the amount which will be left for lending will be 55.5% of the deposits. We shall be able to lend only to the extent of 50% of the deposits. This is, however, subject to the proposals, otherwise being in order. You may recommend viable proposal restricting the outflow of funds to 50% of deposits, and seek our clearance."

The stipulations in the Head Office letter dated 02-06-1987 were:-

1. the loanees should be persons whose salaries were routed through the Bank;
2. the loanees should be employed in companies who had dealings with the bank;
3. loans should be recommended only to the extent of 50% of the deposits mobilized;
4. extending of loans was to be subject to the proposals otherwise being in order; and
5. viable proposals could be recommended restricting the outflow of funds to 50% of deposits, and clearance from the Head Office was to be sought.

While the petitioner would contend that he had received an official communication from the Zonal Office, informing him of the

aforesaid conditions stipulated by the Head Office, only on 13-06-1987, prior to which he had addressed a letter to M/s.BMR Estates and Builders on 10-06-1987, it is not in dispute that the petitioner did not adhere to all the conditions stipulated therein. The petitioner was informed, vide letter dated 11-08-1987, (Ex.S.12), that the Head Office, in its earlier letter No.3636 dated 02-06-1987, had instructed the Zonal Office to seek clearance only in the case of proposals sanctioned to:-

1. *Persons whose salaries were routed through the Bank and persons employed in companies who were having dealings with the bank;*
2. *Curtailing outflow of funds to 50% of deposits; and*
3. *Proposals being otherwise in order.*

The Zonal Office enquired from the petitioner whether these conditions were fulfilled, in all cases of loans released to enable the Zonal Office to seek Head Office clearance from ***"resources angle"***. The petitioner was advised to give these details without fail, henceforth, so that the Zonal office could seek clearance from the Head Office straight away.

In reply thereto, the petitioner, in his letter dated 14-08-1987 (Ex.S-13), informed the Zonal Office that the borrowers had submitted irrevocable letters of undertaking to the effect that the monthly instalments and interest on the loans would be collected from the salary and remitted to the branch, that the companies, whose employees were being financed under the scheme, could not be persuaded to open an account for obvious reasons, that this condition may not be insisted upon, that the branch had already been advised to restrict lending to 50% of the deposits, that the

Chairman during his recent visit to Hyderabad had permitted one of their city branches to lend upto 60% of the deposits and, therefore, the matter should be taken up with the Head Office and their permission sought to lend upto 60% of the deposits since these amounts were FCNR deposits. The petitioner further informed that the proposals were scrutinized properly before sanction and, unless they were found complete in all respects, the loans were not to be disbursed. In his letter dated 20-08-1987 (Ex.S-14), the petitioner informed the Zonal Office that the Divisional Office had already recommended enhancement of loans from the earlier 50% of the deposits received to 60% of the FCNR deposits, which may be permitted, and that the decision in this regard be conveyed to the Divisional Office. The said letter in Ex.S-14 contains an endorsement of the Zonal Office dated 26-08-1987 that "***this has been discussed with the Chairman during his visit to our office on 7th/8th and it was agreed that we can lend upto 60%***". Vide letter 27-08-1987 (Ex.S-15), the petitioner was informed that the Chairman of the Bank, during his visit to the Zonal Office on 07.08.1987, had agreed that the bank could lend upto 60% and, therefore, the Divisional Office could permit the branch to lend upto 60% and that this facility was to be used for sanctioning loans to employees of government/semi-government/ reputed companies recommended by M/s.BMR Estates & Builders only and that the branch should follow the terms and conditions laid down in the letter of the Head Office dated 02-06-1987.

It is clear, from Ex.S-15 letter dated 27-08-1987, that the

Chairman, during his visit to Hyderabad on 07-08-1987, had only approved loans being extended upto 60% of the FCNR deposits mobilized, as against the earlier prescribed limit of 50%, and that, in addition, the conditions laid down in the Head Office letter dated 02-06-1987 and the Zonal Office letter dated 11-08-1987 were required to be adhered to. It is also clear that the Chairman and Managing Director did not accord approval for sanction or release of the loans in its entirety but did so only from the "resource angle".

The question which would then arise for consideration is whether the Zonal Office had accorded such approval. In the very same letter, in Ex.S-15 dated 27-08-1987, the petitioner was asked to furnish certain information for seeking resource clearance from the Head Office. The information sought for was:

1. *Details regarding total number of loans released and deposits secured through M/s. BMR Estates and Builders i.e. date of deposit, amount of deposit, number of beneficiaries, name of the company in which the borrowers were employed, loan amount etc.*
2. *Deposit target of the branch and FCNR deposits for the last three quarters.*
3. *Terms of sanction.*

In Ex.S-16 letter dated 01-09-1987, the Branch Manager furnished the information sought for by the Zonal Office. The Zonal Office in turn, in its letter dated
28-09-1987 (Ex.S-17), informed the Head Office that the total number of demand loans, arranged by the branch upto
01-09-1987, were 1181, that the amount involved was Rs.96.55 lakhs and that the Chairman, during his visit to the Zonal Office on

07/08-08-1987, had agreed to sanction loans upto 60% of the deposits canvassed and that the branch had so far arranged loans to the extent of Rs.96,55,200/- and still had eligibility to extend loans to an extent of Rs.19,09,800/- . With regards the Head Office's stipulations to consider the proposals only if the loanees salaries were routed through the bank and the loanees were employed in companies having dealings with the Banks, the Zonal Office informed the Head Office that the Divisional Office had reported that this condition was not being insisted upon as the companies could not be persuaded to deal with the bank for obvious reasons and that the branch had obtained irrevocable letters of undertaking to the effect that the monthly instalments and interest on the loans would be collected from the salary and remitted to the branch. The Head Office was further informed that the other terms and conditions of the loan were:

a. repayment period 36 months.
b. Rate of interest at 16.5%.

The petitioner furnished detailed information to the Zonal Office, in his letter dated 14-10-1987 (Es.S-18), and, thereafter, the Zonal Office, in its letter dated 23-10-1987 (Ex.S-19), informed the Head Office of these details.

The Branch Manager, in his letter dated 18-12-1987 (Ex.S-23), informed the Divisional Manager that their branch was being subjected to RBI inspection in respect of the schemes sponsored by M/s.BMR Estates and Builders and, in the absence of a specific sanction letter, the RBI investigating authorities were not convinced. The Branch Manager requested

the petitioner either to send a copy of the original sanction letter given to the branch or to approve the action of the branch in sanctioning demand loans to 1452 employees of government, semi-government and other reputed companies amounting to Rs.1,18,81,200/-, which would enable the branch to inform the RBI accordingly. Pursuant thereto the petitioner, while enclosing a copy of the letter dated 18-12-1987, informed the Zonal Office, vide letter in Ex.S-24 dated 22-12-1987, that the loans were authorized to the branch after getting permission from the Chairman by the Divisional Office/Zonal Office and, since the Reserve Bank was keen to have their specific sanction for individual demand loans, the Divisional Office be permitted to approve the action of the branch in this regard. On the said letter in Exs.S-24 dated 22-12-1987, there is an endorsement dated 26-12-1987 by the Zonal Office that "***this was agreed to by the Chairman during his visit to Hyderabad***" . Again, vide letter dated 06-01-1988 (Ex.S-25), the Zonal Office informed the petitioner that they did not receive individual details, of the loans sanctioned, in the Clearance Format. The Zonal Office once again confirmed that the petitioner could agree with the branch to lend upto 60% of the deposits instead of 50% as per the discussions they had with the Chairman and Managing Director of the bank during his visit to Zonal Office on 07/08-08-1987 and that the Zonal Office had permitted the Divisional Office to allow the branch to arrange loans as per the conditions stipulated by the Head Office. Petitioner was also informed that as per further instructions from the Head Office, vide letter dated 02-12-1987, the Zonal Office had

instructed the Divisional Manager to advise the Alwal branch not to arrange any fresh loans without Head Office's clearance. While calling upon the petitioner to confirm that no further loans were arranged to employees, for purchasing plots from M/s.BMR Estates & Builders, the Zonal Office advised him to send the Clearance Format, with a list containing particulars of all the loans sanctioned, for the purpose of Clearance from ***"Resources Angle"***. In reply thereto, the petitioner supplied detailed information in his letter dated 20.1.1988 (Ex.S-26), including the position of demand loans sanctioned to employees of government, semi-government and other reputed companies as on 10-12-1987. He also confirmed that no further loans were being arranged for purchasing plots from M/s. BMR Estates & Builders through the Alwal Branch and that they had also enclosed the clearance format. The petitioner requested the Zonal Office to approve the branch's action in having released the loans and requested that a copy of the regular sanction letter be sent to the branch under a copy to the Divisional Office for the purpose of records.

The Zonal Office, in its letter dated 22-02-1988 (Exs.S-27(1) and S-27(2)), in reply to the letter of the Divisional Office dated 25-01-1988 informed that the loans already released stood approved. Both Sri S. Ashok Anand Kumar, learned counsel for the petitioner and Sri A. Krishnam Raju, learned standing counsel for the respondent-bank, would agree that the said letter dated 25-01-1988 did not form part of the enquiry proceedings nor was the said letter marked as an exhibit in the departmental enquiry. The contents of the letter dated 25-

01-1988 are not known.

Since the entire case of the petitioner revolves around the contents of the letter dated 22-02-1988 addressed to the Divisional Manager by the Zonal Office, and a copy thereof marked to the Head Office with certain observations, it is necessary to reproduce the contents of these letter in their entirety (The letter addressed by the Zonal Officer to the Divisional Manager in Ex.S-27(1) and its copy forwarded to the Head Office with the comments of the Zonal Office in Ex.S.27(2)).

Ex.S-27(1)

Ref.No.5235/51807/3033/CAS-II:ZO:HYD
Date 22nd February, 1988.

The Divisional Manager,
Hyderabad Rural Division,
SECUNDERABAD.

Dear Sir,

Sub: *Loans arranged to the employees of Govt./Semi Govt. Reputed Companies for purchase of plots from M/s.BMR Estates & Builders at our Alwal Branch.*

*****

We refer to your letter No.10368/30181/3040 dated 25-01-1988 and wish to inform you that our Chairman & Managing Director during his visit to Hyderabad on 7th August, '87 had permitted release of loans upto 60% of the deposits canvassed by M/s.BMR Estates & Builders. ***Therefore the loans that are already released stand approved.***

We advise you to closely monitor recovery of these loans and report the developments in this regard on monthly basis.

Yours faithfully
Sd/-

Dy. General Manager.

Ex.S-27(2)

Ref.No.5235/51807/3033/CAS-II:ZO:HYD

Date 22nd February, 1988.

The Divisional Manager,
Hyderabad Rural Division,
SECUNDERABAD.

Dear Sir,

Sub: *Loans arranged to the employees of Govt./Semi Govt. Reputed Companies for purchase of plots from M/s.BMR Estates & Builders at our Alwal Branch.*

*****

We refer to your letter No.10368/30181/3040 dated 25-01-1988 and wish to inform you that our Chairman & Managing Director during his visit to Hyderabad on 7th August, '87 had permitted release of loans upto 60% of the deposits canvassed by M/s.BMR Estates & Builders. ***Therefore the loans that are already released stand approved.***

We advise you to closely monitor recovery of these loans and report the developments in this regard on monthly basis.

Yours faithfully
Sd/-

Dy. General Manager.
Copy to Head Office
Manipal.

Our Alwal branch had arranged a total number of 1452 loans involving an amount of Rs.1,18,81,200/- under the above category, of which, 78 accounts amounting to Rs.6.36 lacs were closed in full. Now the total number of accounts outstanding is 1374 amounting to Rs.1,12,45,200/- and this was well within 60% of the deposits canvassed.

(Total amount of FCNR deposits canvassed is Rs.1,92,75,000/- and 60% of the deposits is Rs.1,15,65,000/-)

Further DO had confirmed that branch has stopped arranging loans under this category, all the complaints have been promptly attended to by deputing their officers and the repayment position of all the accounts has improved.

In view of the above and since Managing Director had already permitted release of the loans during his visit on 07-08-1987 we have approved branch action in releasing the loans. We request you to find our action in order.

Dy. General Manager.

Pursuant thereto the petitioner informed the Alwal Branch, vide letter dated 02-03-1988 (Ex.S-28), that the loans already released stood approved. It is useful to also extract the contents of the said letter dated 02-03-1988.

Ref No.10947/3040/HRD

Date 2nd March, 1988

The Manager,
Alwal Branch.

***Sub**:Approval for loans sponsored by M/s. B.M.R. Estates & Builders, Hyderabad.*

****

We refer to your letter No.248/3020/3040/DL/88, on referring the above matter to our Zonal Office, they have directed to inform you that our Chairman and Managing Director during his visit to Hyderabad on 7th August, 1987 had permitted release of loans upto 60% of the deposits canvassed by M/s. B.M.R. Estates & Builders, Hyderabad. Therefore, the loans that are already released stand approved.

We advise you to closely monitor recovery of these loans and report the developments in this regard on monthly basis to enable us to report back to Zonal Office/Head Office by 5th of every month positively.

Yours faithfully,

DIVISIONAL MANAGER

It is necessary to note that the Zonal Office, in its letter dated 22-02-1988 (Ex.S-27(1)), addressed to the Divisional Manager, (the petitioner herein) while referring to the permission granted by the Chairman and Managing Director to release loans upto 60% of the deposits canvassed by M/s. BMR Estates & Builders, informed that, therefore, the loans that were already released stood approved. A copy of the said letter dated 22-02-1988 was marked to the Head Office (EX.S-27(2)), whereby the Zonal Office informed the Head Office that the Divisional Office had confirmed that the branch had stopped arranging loans under

this category, that all the complaints had been promptly attended to by deputing their officers and the repayment position of all the accounts had improved and, in view of the above and since the Managing Director had already directed release of the loans during his visit on 07-08-1987, they (i.e Zonal Office) had approved the action of the Branch in releasing the loans. The Zonal Office requested the Head Office to find its action in order.

While Sri S. Ashok Anand Kumar, learned counsel for the petitioner, would contend that the approval accorded, in the said letter dated 22-02-1988 (Ex.S-27(1) and S-27(2)) is for the branch's action in releasing the loans and not merely from the resources angle, Sri A. Krishnam Raju, learned standing counsel for the respondent-bank, would submit that, since the letter refers to the permission accorded by the Managing Director to release loans upto an extent of 60%, the approval accorded by the Zonal Office must necessarily be held to have been restricted only to the release of loans from the resource angle and that the failure of the petitioner to adhere to the stipulations in the Head Office letter dated 02-06-1987 or to the Zonal Office letter dated 11-08-1987, had not been condoned.

It is also useful to refer to the letter dated 11-09-1989, addressed by the Branch Manager to the Assistant General Manager (Vigilance) (Ex.D.6), wherein it was stated that the demand loans were unsecured advances and the question of holding any margin did not arise since the security of land purchased from the loan was not mortgaged and taken as security to the loan and that the demand loan was a clean advance. In his

letter dated 17-02-1989 (Ex.D-8), addressed to the Head Office, the Assistant General Manager (Vigilance) refers extensively to letter No.5235 dated 22-02-1988 of the Zonal Office, (Ex.S.27(1) and S.27(2), and records his comments. The relevant portion of the said letter dated 17-02-1989 reads thus:

> *"Vide letter No.5235 dated 22-02-1988, ZO had informed you that,*
>
> *1. they have approved the branch action in arranging the loans since the Chairman and Managing Director had already permitted release of loans upto 60% of the deposits during his visit to Hyderabad.*
>
> *2. that deposits worth Rs.192 lacs have been secured and the loans advances are well within 60% of the deposits canvassed.*
>
> *As such they had requested HO to approve their action.*
>
> *We would like to have your clarifications/reply on the following points, having regard to the matter discussed above.*
>
> *1. Whether you have approved the ZO action as sought by them in their letter No.5235 dated 22-02-1988.*
>
> *2. Vide your letter dated 02-12-1987 you had advised ZO not to arrange any fresh loans at Alwal branch and that Bank is not in favour of the scheme etc since the Board is not in favour of the same etc.*
>
> *The wordings of the letter could be interpreted to mean that you have not disapproved the action of ZO in having arranged the loans already to the extent of 60% of the deposits and ZO is only cautioned not to arrange loans in future. It may be noted that even before receipt of such letter, branch had stopped arranging of loans from 25-09-1987 i.e. as soon as the limit of 60% of the deposits had been reached by the branch Since it is not categorically stated in the said HO letter that the loans so far released by the branch are treated as unauthorized, we request you to clarify the above point and let us know whether the loans already released upto the extent of 60% stand approved by you and whether the directive of the Board was to be applied in future only.*
>
> *3. Though ZO had not sought HO's clearance in the prescribed format, they had kept HO informed about the loans arranged vide their letter No.6031 dated 28-09-1987 and 6154 dated 23-10-198. Hence the action of ZO not*

seeking the clearance in the prescribed format could be construed only as a procedural irregularity. Further, clearance is to be sought from resources angle. In this case, the resources were already mobilized and hence seeking clearance of HO was a mere formality. Even assuming that, ZO had sought HO's clearance before releasing the loans, it is felt that HO would have given the clearance since there would not have been any problem from resources angle as the branch had already received deposits of Rs.1.92 crores.

In addition to this the loans sanctioned were under a special scheme and hence it is felt that seeking of clearance in the prescribed format may not be applicable in these cases as usually applicable to other cases.

Hence failure on the part of ZO in obtaining clearance of HO in the prescribed format appears to be only a technical lapse. Hence we would like to have your opinion/clarification in this matter as early as possible.

Thanking you,

Yours faithfully,

ASST. GENRAL MANAGER (VIGILANCE)

There is an endorsement on the said letter, by the Head Office, that proposals were not sent for clearance as per Head Office's letter dated 02-06-1987 and that the Head Office would have given clearance only if it were as per the scheme and taking an overall view of the liquidity position in view of the strained position of the Bank on the resources front in spite of the deposits.

While taking note of Ex.D.8 letter dated 17-02-1989, addressed to the Head Office by the Assistant General Manager (Vigilance), the enquiry officer observed that the petitioner had disregarded the conditions stipulated in the Head Office's letter dated 02-06-1987 (Ex.S.6), in writing the letter dated 10-06-1987 (Ex.S-8) to M/s. BMR Estates and Builders and in

permitting the Alwal branch to release loans and presenting a fait accompli to the Zonal Office/Head Office. The enquiry officer takes note of the endorsement on Ex.D.8 that it was noted that the Head Office would have given clearance only if it were as per the scheme and taking an overall view of the liquidity position in view of the strained position of the bank on the resources front.

The fact remains that the enquiry officer has not recorded any finding on the question whether, or not, the approval granted by the Zonal Office was for the loans already released by the branch without adhering to the conditions stipulated in the Head Office's letter dated 02-06-1987. The Zonal Office was aware, from the earlier correspondence, that the loans released by the Alwal branch were not in conformity with the Head Office letter dated 02-06-1987. In such circumstances when the letter in Ex.S-27(1) dated 22-02-1988 does not specifically state that approval was accorded only from the resources angle, and in Ex.S-27(2) the Zonal Office informs the Head Office of various factors, other than the approval granted by the Chairman and Managing Director, as the reason for their approving the branch action in releasing the loans, can it be said that the findings of the enquiry officer, that approval was accorded only from the resources angle, is on the basis of the evidence on record? The enquiry officer merely refers to Ex.S.27(1), (the letter addressed by the Zonal Office to the petitioner), and not to the contents of Ex.S.27(2) in its entirety, to hold that the approval granted by the Zonal Office in Ex.S.27(1) was from the resource angle as the Alwal branch was inspected by the RBI officers and they desired

to seek specific sanction orders in respect of the subject loans. The enquiry Officer also notes that the action of the Zonal Office was not ratified by the Head Office to whom a copy of Ex.S-27(2) had been sent "to find their action in order". No finding has, however, been recorded by the enquiry officer on the question whether the observations made by the Zonal Office in Ex.S-27(2), while requesting the Head Office "to find their action in order", was merely from the resources angle or whether the branch's action in releasing the loans was approved in its entirety.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. (**Syed Yakoob Vs. K.S. Radhakrishnan**[9]). In **Municipal Council, Sujanpur Vs. Surinder Kumar**[10] the Supreme Court observed:-

"……The High Court's jurisdiction to issue a writ of certiorari though is limited, a writ of certiorari can be issued if there is an error of law apparent on the face of the record. What would constitute an error of law is well known. In *Judicial Review of Administrative Action* , IVth Edn., pp. 136-37, S.A. de Smith has summed up the position:

"**The concept of error of law includes** the giving of reasons that are bad in law or (if there is a duty to give reasons) inconsistent, unintelligible or, it would seem, substantially inadequate. It includes also the application of a wrong legal test to the facts found, **taking irrelevant considerations into account and failing to take relevant considerations into account**, exercising a discretion on the basis of any

other incorrect legal principles, misdirection as to the burden of proof, **and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence**."

While Courts in judicial review will not, ordinarily, interfere with assessment of fact, in certain situations, however, they may do so: first, where the existence of a set of facts is a condition precedent to the exercise of a power and second, when the decision-maker has taken into account as a fact something which is wrong or where he has misunderstood the facts upon which the decision depends or where the evidence, taken as a whole, is not reasonably capable of supporting a finding of fact. Again, these decisions are best described as strictly "irrational". (**Judicial Review of Administrative Action: de smith, woolf & Jowell – Fifth Edition**)

Mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquires held under the statutory rules. (**Union of India Vs. H.C. Goel**[11]).

Lord Denning MR, in **Ashbridge Investments Ltd Vs. Minister of Housing and Local Government**[12], observed:-

"……The court can interfere with the Minister's decision if he has acted on no evidence; or if he has come to a decision to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; **or if he has taken into consideration matters which**

he ought not to have taken into account, or vice versa; or has otherwise gone wrong in law. It is identical with the position when the court has power to interfere with the decision of a lower tribunal which has erred in point of law……"

*(**Administrative Law: H.W.R. Wade & C.F. Forsyth Ninth Education**)*

Factual mistakes have, on occasions, also been a ground of judicial review, described as *"**misunderstanding or ignorance of an established and relevant fact"**.* Lord Wilberforce, in **Secretary of State for Education and Science Vs. Tameside MBC**[13] observed:-

"….**If a judgment requires, before it can be made, the existence of some facts**, then, although the evaluation of those facts is for the Secretary of State alone, **the court must inquire whether those facts exit, and have been taken into account, whether the judgment has been upon a proper self-direction as to those facts**, whether the judgment has not been made upon other facts which ought not to have been taken into account. **If those requirements are not met, then the exercise of judgment, however bona fide it may be, becomes capable of challenge**……." (emphasis supplied).

Lord Wilberforce approved a remark by Lord Denning MR that the court could intervene if a minister *'**plainly misdirects himself in fact or in law**'*: (**Secretary of State for Employment Vs. ASLEF (No.2)**[14]**; and Smith Vs. Inner London Education Authority**[15]).

When it appears that no person properly instructed in law, and acting judicially, could have reached the particular decision the Court may proceed on the assumption that a misconception of law has been responsible for the wrong decision. (**Provincial**

Transport Services Vs. State Industrial Court[16]).

It is not for this Court, in certiorari proceedings, to evaluate the evidence on record or to analyse in detail the contents of Ex.S.27 (1) and (2) to come to a conclusion, whether the approval accorded by the zonal office was for the loans released in its entirety or only from the 'resources angle', for evaluation/analysis of evidence is in the enquiry officer's/disciplinary authority's realm. The contents of Ex.S-27(2), (the letter of the zonal office dated 22.2.1988), has a direct bearing on the disciplinary action taken against the petitioner, for if the zonal office is held to have accorded sanction for the loans, released earlier, in their entirety, and not merely from the 'resources angle', the petitioner cannot be held responsible for the irregularities alleged against him once sanction is accorded by the zonal office for the loans. In case the zonal office had accorded approval, without obtaining clearance of the head office, then the responsibility lay with the zonal office and action should have been taken against the concerned officers in the zonal office, and not the petitioner, more so in the light of the specific finding by the enquiry officer that there was no substantive evidence to show that the petitioner was responsible for the irregularities alleged in the complaints received by the bank or that there were lapses or negligence on his part in the discharge of his official duties.

While the petitioner had contended before the appellate authority that he was singled out for isolated/discriminatory treatment, in holding that he was responsible, the appellate authority brushed it aside holding that this contention was not

supported by substantial evidence. The order of the appellate authority does not reflect application of mind on the question whether or not disciplinary action was initiated either against the branch manager or officers in the zonal office nor is any specific reference made by the appellate authority, in his order dated 20.02.1996, to any such action having been taken. As allegations of discrimination in punishment are alleged in this writ petition this Court is required to exercise jurisdiction as a primary reviewing authority. Where administrative action is challenged under Article 14 as being discriminatory, Constitutional Courts, as the primary reviewing Courts, are required to consider the correctness of the level of discrimination applied, whether it is excessive and has a nexus with the object sought to be achieved. The Court deals with merits of the balacting action of the administrator applying the doctrine of "proportionality" (**Om Kumar Vs. Union of India**[17]).

In the light of the fact that the loans were released by the Branch, and not the Divisional Office, and if it were to be held that the Zonal Office, in Exs.S.27(1) and (2) letter dated 22.2.1988, had accorded permission for release of the loans in their entirety, and not merely from the resources angle, the petitioner could not have been singled out for punishment and responsibility ought to have been fixed on the concerned officers in the zonal office who had accorded sanction despite loans having been released in deviation of the norms stipulated in the head office letter dated 2.6.1987. Both on the ground that the respondents had not applied their mind to the question whether or not the petitioner was singled out for punishment and since the Enquiry Officer has failed to take into

consideration the admissible and material evidence in Ex.S-27(2), more particularly the contents of the note addressed by the Zonal Office to the Head Office, the impugned orders of punishment are liable to be quashed.

Sri A. Krishnam Raju, learned standing counsel for the respondent – bank would, however, contend that even if the zonal office is held to have accorded approval for the loans in its entirety, this aspect did not relate to charge No.1 and charge No.1 must be held to have been established. It is necessary to note that there is only one charge and it is irregularity (a) which the learned Standing Counsel claims to have been established as Charge No.1. This irregularity relates to the letters addressed by the petitioner to M/s BMR Estates and Builders on 10.6.1987, agreeing to their proposals dated 30.4.1987, contrary to the head office letter No.3636 dated 2.6.1987. It is the specific case of the petitioner, (which has been accepted by the enquiry officer in his report), that he did not receive the official copy of the said letter dated 2.6.1987 prior to his addressing the letter to M/s BMR Estates and Builders on 10.6.1987. The enquiry officer, however, holds that the petitioner had issued Ex.S.8 letter dated 10.6.1987 without awaiting for the official transmission of Ex.S.6 letter dated 2.6.1987 and that, in his letter in Ex.S.8 dated 10.6.1987, he had not included the terms stipulated in Ex.S.6 letter dated 2.6.1987. Since the enquiry officer had held that the petitioner did not receive the official copy of Ex.S.6 letter dated 2.6.1987 before he addressed Ex.S.8 letter dated 10.6.1987 to M/s BMR Estates and Builders, the finding that the petitioner ought to have included the

terms of the said letter dated 2.6.1987 in the letter dated 10.6.1987, addressed by him to M/s BMR Estates and Builders, is perverse. The petitioner has not been charged of having committed any irregularity in addressing the letter dated 10.06.1987 to M/s. B.M.R. Estates & Builders without awaiting receipt of H.O. letter dated 02.06.1987. The findings of the Enquiry Officer construing this as a lapse is beyond the scope of the enquiry and extraneous to the charge memo.

Since the impugned orders are liable to be quashed on the ground of non-application of mind by the respondents on the question whether the petitioner has been discriminated against, in being proceeded against departmentally and in being singled out for imposition of the major punishment of "compulsory retirement" and, as the enquiry officer has failed to take into consideration the admissible material evidence on record, it is wholly unnecessary for this court to examine the contention of Sri S. Ashok Anand Kumar, relying on the Circular dated 9.12.2002 issued by the respondent bank subsequent to imposition of punishment on the petitioner that no disciplinary action could be taken against the petitioner, for the accountability lapses, if any, as such lapses were subsequently condoned on sanction being accorded by the zonal office for the loans released earlier.

The writ petition is allowed and the impugned order of the 2nd respondent dated 23.3.1992 and the 1st respondent dated 20.2.1996 are, accordingly, quashed. However, in the circumstances, without costs.

Date: .06.2007 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.
B/o
MRKR/ASP

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[1] 1995 Supp (3) SCC 456
[2] 2003(5) SCC 83
[3] 2000(5) SCC 231
[4] AIR 1967 SC 1124
[5] AIR 1982 SC 937
[6] 1994(1) SCC 292
[7] 1996(2) SCC 205
[8] 2006(5) SCC 153
[9] 1964 (5) SCR 64
[10] (2006)5 SCC 173
[11] (1964) 4 SCR 718
[12] (1965) 1 WLR 1320 at 1326
[13] (1977) AC 1014
[14] (1972) 2 QB 455 at 493
[15] (1978) 1 All ER 411
[16] AIR 1963 SC 114
[17] 2001(2) SCC 386